

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

HOUSTON BYRD, JR.,	)	
	)	No. 2:17-cv-01538
Plaintiff,	)	
	)	Judge David Stewart Cercone
v.	)	Magistrate Judge Lisa Pupo Lenihan
	)	
JEFFREY A. MANNING, <i>Court of</i>	)	
<i>Common Pleas of Allegheny</i>	)	ECF Nos. 1, 6
<i>County,</i>	)	
	)	
Defendant.	)	

**MEMORANDUM ORDER**

Plaintiff initiated this *pro se* civil action on November 2, 2017 by filing a Petition for Writ of Mandamus in the Eastern District of Pennsylvania, without attaching either the filing fee or an application to proceed *in forma pauperis*. Subsequently, upon order of court, Plaintiff filed an Application to Proceed *In Forma Pauperis* in the Eastern District, and said motion was granted. The court also ordered that the case be transferred to the Western District of Pennsylvania. Subsequently, the case was transferred to this District and referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1), and Local Rules of Court 72.C and 72.D.

In accordance with the directives in 28 U.S.C. §1915e, as amended, the Magistrate Judge conducted a preservice review of the Petition. As a result of her review, the Magistrate Judge issued a Report and Recommendation (ECF No. 6) on December 11, 2017, in which she recommended that the Petition for Writ of Mandamus (ECF No. 1), which was commenced *in forma pauperis*, be dismissed with prejudice

under 28 U.S.C. § 1915e(2)(B) as frivolous, and for failure to state a claim upon which relief may be granted, and because this Court lacks subject matter jurisdiction over this action.

Service was made on Plaintiff via first class mail to his address of record. Plaintiff was informed that in accordance with the Magistrate Judges Act, 28 U.S.C. §636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that he had fourteen (14) days to file any objections. Plaintiff filed timely Objections (ECF No. 7) to the Report and Recommendation on December 20, 2017.

After review of the pleadings and documents in the case, together with the Report and Recommendation, and objections thereto, the following Order is entered:

**AND NOW**, this 23rd day of January, 2018,

**IT IS HEREBY ORDERED** that the Petition for Writ of Mandamus is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. § 1915e(2)(B)(i) & (ii).

**IT IS FURTHER ORDERED** that the Report and Recommendation (ECF No. 6) of Magistrate Judge Lenihan, dated December 11, 2017, is adopted as the opinion of the Court.

s/ DAVID STEWART CERCONI  
David Stewart Cercone  
Senior United States District Judge

cc: Houston Byrd, Jr.  
241 N. 10<sup>th</sup> Street  
Newark, OH 43055  
(Via First Class Mail)